

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN
MILWAUKEE DIVISION**

MARVIN SEEGER AND BRADLEY)	
GAMROTH,)	
)	
Plaintiffs,)	
)	
v.)	Case No.
)	
AFNI, INC.,)	Jury Demanded
)	
Defendant.)	

COMPLAINT

INTRODUCTION

1. This action seeks redress for collection practices that violate the Fair Debt Collection Practices Act, 15 U.S.C. § 1692.

JURISDICTION AND VENUE

2. The court has jurisdiction to grant the relief sought by the plaintiff pursuant to 15 U.S.C. § 1692k and 28 U.S.C. §§ 1331 and 1337. Venue in this District is proper in that defendant directed its collection efforts into the District.

PARTIES

3. Plaintiff Marvin Seeger is an individual who resides at 4610 South 49th Street, Greenfield, WI 53220-4118.

4. Plaintiff Bradley Gamroth ("Plaintiff") is an individual who resides at North 7354 Switzke Road, Watertown, WI 53094

5. Plaintiffs are "consumers" as defined in the FDCPA, 15 U.S.C. § 1692a(3), in that defendant sought to collect from them debts allegedly incurred for personal, family or household purposes.

6. Plaintiff are “customers” as defined in the Wisconsin Consumer Act, § 421.301(17), Wis. Stats., in that they acquired cellular telephone services on credit with an agreement to defer payment for personal, family or household purposes.

7. Defendant AFNI, Inc. (“AFNI”) is a corporation with principal offices in Bloomington, Illinois.

8. AFNI is engaged in the business of collecting debts owed to others and incurred for personal, family or household purposes. AFNI is a debt collector as defined in 15 U.S.C. § 1692a.

FACTS

9. Plaintiffs entered into consumer credit transactions with Cingular Wireless II, LLC or an affiliate or predecessor corporation. Such consumer credit transactions were for services, and involved agreements to render services and defer payment. Such agreements are governed by the Wisconsin Consumer Act, ch. 421-427, Wis. Stats.

10. On or about September 27, 2004, AFNI sent Plaintiff Seeger a debt collection letter from FCS regarding an alleged debt assigned to AFNI. Upon information and belief, this was the first letter Plaintiff Seeger was sent by AFNI. See Exhibit A.

11. Exhibit A attempts to collect a “collection fee” of \$15.87.

12. On or about April 2, 2005, AFNI sent Plaintiff Gamroth a debt collection communication. Upon information and belief, this was the first letter Plaintiff Gamroth was sent by Defendant. See Exhibit B.

13. Exhibit B attempts to collect a collection fee of \$50.44.

COUNT I – FDCPA

14. Plaintiffs incorporate the above numbered paragraphs by reference.

15. Collection fees are prohibited under the Wisconsin Consumer Act, § 422.202, Wis. Stats. *See also Patzka v. Viterbo College*, 917 F. Supp. 654, 659 (W.D. Wis. 1996).

16. AFNI's attempt to collect prohibited collection fees violates 11 U.S.C. § 1692f.

17. AFNI's representation that collection fees are owed violates 11 U.S.C. §§ 1692e, 1692e(2)(A), and 1692e(5).

18. AFNI failed to state the true amount of the debt owed, in violation of 11 U.S.C. § 1692g(a)(1).

CLASS ALLEGATIONS

19. Plaintiffs bring these claims on behalf of a class, consisting of (a) all natural persons in the State of Wisconsin (b) who were sent a collection letter by AFNI imposing a collection fee (c) for Cingular telephone service obtained for personal, family or household purposes, (d) on or after a date one year prior to the filing of this action, (e) that was not returned by the postal service.

20. The class is so numerous that joinder is impracticable. On information and belief, there are more than 50 members of the class.

21. There are questions of law and fact common to the members of the class, which common questions predominate over any questions that affect only individual class members. The predominant common question is whether Exhibits A and B violates 15 U.S.C. §§ 1692e, 1692f and 1692g.

22. Plaintiffs' claims are typical of the claims of the class members. All are based on the same factual and legal theories.

23. Plaintiffs will fairly and adequately represent the interests of the class members. Plaintiffs have retained counsel experienced in consumer credit and debt collection abuse cases.

24. A class action is superior to other alternative methods of adjudicating this dispute. Individual cases are not economically feasible.

WHEREFORE, plaintiffs request that the Court enter judgment in favor of plaintiffs and against defendant for:

- a. Actual damages, including a refund of all collection fees received by defendant;
- b. Statutory damages;
- c. Attorney's fees, litigation expenses and costs of suit;
- d. Such other or further relief as the Court deems proper.

JURY DEMAND

Plaintiffs demand trial by jury.

Respectfully submitted,

S/ Robert K. O'Reilly
Robert K. O'Reilly (SBN 1027032)
John D. Blythin (SBN 1046105)
ADEMI & O'REILLY, LLP
3620 East Layton Avenue
Cudahy, Wisconsin 53110
roreilly@ademilaw.com
(414) 482-8005
(414) 482-8001 (FAX)

EXHIBIT A

P.O. Box 20939
Ferndale, MI 48220



404 Brock Drive
P.O. Box 3427
Bloomington, IL 61702-3427

Please remit to Bloomington, IL address

09/27/04

Afni, Inc. Account #: 007445744-02

MARVIN SEEGER
4610 S 49TH ST
Greenfield, WI 53220-4118

Original Creditor: CINGULAR
Creditor Account #: 00000220074695
Social Security #: XXX XX



Original Balance: \$105.81
Collection Fee: \$15.87
Balance Due: \$121.68

This account has been acquired by our agency for collection. It is in your best interest to resolve this account.

If you have any questions, please contact our office toll free at (888)338-2364 Monday through Thursday 7am - 9pm, Friday 7am - 8pm, or Saturday 8am - Noon CST. For proper credit on your account, please write this number 007445744-02 on your payment.

Unless you notify this office within 30 days after receiving this notice that you dispute the validity of the debt or any portion thereof, this office will assume this debt is valid. If you notify this office in writing within 30 days from receiving this notice, this office will: obtain verification of the debt or obtain a copy of a judgment and mail you a copy of such judgment or verification. If you request this office in writing within 30 days after receiving this notice this office will provide you with the name and address of the original creditor, if different from the current creditor. This is an attempt to collect a debt. Any information obtained will be used for that purpose. You have the right to inspect your credit. This letter is from a debt collector.

Sincerely,

Afni, Inc.

See Reverse for Afni Privacy Notice.

Please return this portion with your payment
For proper credit please write 007445744-02 on your check

Afni, Inc. Account #: 007445744-02

Original Creditor: CINGULAR
Creditor Account #: 00000220074695
Social Security #: XXX XX

Balance Due: \$121.68

Please make checks payable to:

Afni, Inc.
404 Brock Dr.
P.O. Box 3427
Bloomington, IL 61702-3427



MARVIN SEEGER
4610 S 49TH ST
Greenfield, WI 53220-4118

EXHIBIT B

P.O. Box 20939
Ferndale, MI 48220



Please remit to Bloomington, IL address

04/02/05



404 Brock Drive
P.O. Box 3427
Bloomington, IL 61702-3427

Afni, Inc. Account #: 008100107-02

Original Creditor: CINGULAR
Creditor Account #: 00000205182901
Social Security #: XXX-XX-7838

Original Balance: \$336.31
Collection Fee: \$50.44
Balance Due: \$386.75

BRADLEY GAMROTH
340 E LISBON RD
Oconomowoc, WI 53066-2839



This account has been acquired by our agency for collection. It is in your best interest to resolve this account.

If you have any questions, please contact our office toll free at (888)338-2364 Monday through Thursday 7am - 9pm, Friday 7am - 8pm, or Saturday 8am - Noon CST. For proper credit on your account, please write this number 008100107-02 on your payment.

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Sincerely,

Afni, Inc.

See Reverse for Afni Privacy Notice.

Please return this portion with your payment
For proper credit please write 008100107-02 on your check

Afni, Inc. Account #: 008100107-02

Original Creditor: CINGULAR
Creditor Account #: 00000205182901
Social Security #: XXX-XX-7838

Balance Due: \$386.75

BRADLEY GAMROTH
340 E LISBON RD
Oconomowoc, WI 53066-2839

Please make checks payable to:

Afni, Inc.
404 Brock Dr.
P.O. Box 3427
Bloomington, IL 61702-3427

